LAW OFFICE OF KYLE MARIONNEAUX, LLC
10101 SIEGEN LANE, BUILDING 2, SUITE A
BATON ROUGE, LOUISIANA 70810-4982
(225) 769-7473
FAX (225) 757-1709

WWW.KMXLAW.COM

KYLE C. MARIONNEAUX
kyle@kmxlaw.com

001-001

October 4, 2010

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A235
Washington, D.C. 20554

RE: Implementation of Section 224 of the Act, GN Docket No. 07-245

Dear Secretary Dortch:

The Association of Louisiana Electric Cooperatives, Inc. (ALEC) appreciates being able to provide comments regarding the above matter.

ALEC is a non-profit organization which represents the electric distribution cooperatives operating in the state of Louisiana. These cooperatives provide electric service to roughly 1 million citizens in 54 of the state's 64 parishes.

ALEC files these brief comments in support of the position of the National Rural Electric Cooperative Association ("NRECA") in response to the Federal Communications Commission's ("FCC") July 15, 2010 Order and Further Notice of Proposed Rule Making ("NPRM") regarding the implementation of Section 224 of the Act ("Act").

ALEC has a keen interest in the NPRM as it is extremely likely to have a significant impact on its member cooperatives and their ratepayer members. While 47 U.S.C. Section 224 (a) (1) exempts electric cooperatives from FCC pole attachment jurisdiction, the changes the FCC makes greatly impact cooperatives. FCC regulations set the bar for pole attachment negotiations between electric cooperatives as poles owners and attachers.

We have a concern that recently executed attachment agreements negotiated in good faith between the Louisiana Cable Television Association (LCTA) and ALEC in order to meet our obligation to non-discriminatory access are now being undermined by the FCC's FNPRM, as follows:

- **Lowering pole attachment rates will not help spur broadband deployment in rural and sparsely populated areas.**

In support of NRECA's response, ALEC believes that the NPRM is based on a premise that is faulty and unsubstantiated. That is that lower pole attachment rates promote deployment of broadband to rural areas. They do not. They do, however, cause electric cooperatives and their members to incur costs that cannot be passed on to attachers and lead to higher electric rates to their members. This results in a subsidy or wealth transfer to the attacher companies and their shareholders. As indicated by NRECA, it is a lack of density that is the deterrent.

The attached breakeven analysis[1] utilizes average cable service prices,[2] stated average construction costs, an estimated annual charge rate, and an assumed rental rate of $18 per pole. Two things are important to note:

1. **Customer density in order to break even at current market levels of pricing.**

   ALEC member cooperatives provide a total of 41,288 miles of electric lines to 286,397 customers/members in the state of Louisiana.[3] This works out to less than seven (7) customers per mile. This is far less than the twenty three (23) customers per mile range required for breakeven.

   It is also worth noting that the nation's fourth largest local exchange telephone company reports that 90% of its access lines in the United States and 93% in Louisiana are "DSL Enabled." However, only 37% of those "DSL Enabled" access lines are being utilized by its current customers.[4] This seems to validate the finding in the nearby state of Arkansas[5] that "if you build it, they will come" is not necessarily true.

2. **The pole rental cost as a percentage of total annual costs to the attacher.**

   As the breakeven analysis indicates, pole rental as a percentage of annual costs to the attacher is only in the range of 3 to 4%. The analysis further shows that if pole rental rates were zero (0), the customer density would still not support expansion into the traditional, less populated cooperative territories.

Finally, we have concern that recently executed attachment agreements negotiated in good faith between the Louisiana Cable Television Association (LCTA) and ALEC in order to meet our obligation to non-discriminatory access are now being undermined by the FCC's FNPRM.

- **Our cooperative business model requires that pole attachers must pay their own way.**

As noted in NRECA's comments, only 17% of electric cooperatives report using the FCC's rate formulas to determine pole attachment rental rates. We believe that this is because these formulas, which the NPRM proposes to modify to shift more costs to the pole owners, do not align well with our business model. Tax exempt electric cooperatives must follow Internal Revenue Service cooperative principles in order to maintain their tax exemption. This means equitably allocating costs and "at cost of operation," that is, not operating for profit or below cost (not cross-subsidizing). If a cooperative cannot recover the costs associated with providing pole attachments, then electric consumers must make up the difference. This is particularly unfair when these consumers may not even want to be offered services by the provider making the pole attachments.

Additionally, ALEC comments specifically on our joint use relationships. For example, CenturyLink and AT&T are parties to several joint use agreements with ALEC members in the state of Louisiana. A primary intention of such agreements is for all parties to realize savings through the sharing of pole lines. In fact, if parity is achieved, there is no need for either party to make "adjustment payments" to the other party because there has been a true sharing of pole facilities. Adjustment payments come into play only when parity does not exist. If parity exists, adjustment rates, or rental rates, become a non-issue.

Unlike pole attachment agreements that charge a "tenant" for the use of space on an owner's pole, joint use agreements were originally developed on the assumption that parity was the goal and not "space rental payments." As such, the "adjustment payments" were developed to represent the financial equivalent of not reaching parity, or if you will, of one entity not contributing its fair share of poles. As stated in Appendix B of REA Form 263 – General Agreement, Joint Use of Wood Poles, "Under these principles the rentals are intended, in so far as it is practicable, to result in a sharing of the economies realized by the joint use of pole plant in proportion to the relative costs of separate pole line construction."[6]

If both parties required exactly the same space and entered into a joint use agreement with full intention to contribute their fair share of poles and not make any adjustment payments, each would simply contribute approximately half of the poles in joint use. In essence, parity would be established at a ratio of 50/50. However, the two parties do not usually have the same space requirements such that a typical ratio of space on a pole involving two joint users would likely be closer to 55/45. In such a case, parity would be achieved when there is a 55/45 split of pole ownership in the common operating territory.

Assume a 55/45 coop/telecom parity split as described above. Further assume that the annual pole carrying charge is agreed to by both parties to be $100 per pole. In such a case, fairness would dictate that either party is financially indifferent to reaching parity by either supplying poles or paying the adjustment rate. In this scenario, if the telecommunications company is out of parity, they should be financially indifferent to owning an additional pole or paying the $45

adjustment rate. By the same token, if the electric cooperative is out of parity, the telecommunications company should be indifferent to the electric cooperative owning an additional pole or paying the telecommunications company the $55 adjustment rate for the telecommunications company to own the pole.

It is our contention that the issue of fair rates in joint use relationships would disappear very quickly if there were a good faith attempt towards true ownership parity by the telecommunications companies.

- Space allocation disputes would soon disappear if both parties had to live with "common/unusable" space on the poles they owned.

- Equitable annual pole carrying charge rates would become moot if both parties owned their fair share of poles.

In one recent joint use agreement between an electric cooperative in Louisiana and a telecommunications company, the adjustment rates were agreed as follows:

- $23.62 to be paid by the telecommunications company for space on the electric coop's pole.

- $36.94 to be paid by the electric coop for space on the telecommunications company's pole.

If this is a fair rate, the telecommunications company should be indifferent to paying the $23.62 to attach to the coop's pole or to own the pole and receive $36.94 from the coop to attach to its own pole. The reality is probably that the telecommunications company would rather pay the $23.62 than own the pole and receive twice the $36.94.

As evidence of this, in 1997, BellSouth filed information regarding its "Unbundled Network Element Studies" with the Louisiana Public Service Commission that supported its 1997 internal cost for one (1) foot of pole per year.[7] That figure in 1997 was $20.09. Adjusted for today's costs using the Handy Whitman Index for "Account 364 – Poles, Towers, and Fixtures" in the South Central Region, $20.09 in today's dollars would equate to $28.85. Obviously, thirteen years later, AT&T would be more than happy to pay $23.62 for two (2) feet of normal space.

Furthermore, the Louisiana Department of Transportation, includes, among others, cable television in its definition of a "public utility"[8] and, as such, the LADOT has authority to "prescribe and enforce all rules and regulations as to construction ... of the poles, ... of telegraph, telephone, community antenna television systems ..."[9] There is nothing to prevent cable operators from owning poles.

Joint use of poles should be a means of saving costs for all attaching parties, whether they be telephone, CATV, or any other party occupying a pole, including the power company. The Louisiana Electric Cooperatives would welcome partners and not just tenants. Partners share both the benefits and the burdens of ownership. Under such an arrangement, we believe the issues raised in the FCC's FNPRM will simply disappear.

Thank you for the opportunity to offer comments in regard to this proceeding. We urge the FCC to consider our comments and those to the NRECA to ensure that the Louisiana Electric Cooperatives are able to provide safe and reliable electricity to our members without subsidizing communications companies utilizing our poles.

Respectfully submitted,

Kyle C. Marionneaux

---

[1] Spreadsheet on the "Analysis of Cable Costs and Revenues and the Impact of Pole Rental on Cable System Build-out, attached as Exhibit A.

[2] National Cable and Telecommunications Association website, "Cable Industry Revenue 1996 – 2009" and" Availability", attached as Exhibit B.

[3] The nine electric cooperatives that make up the Association of Louisiana Electric Cooperatives, Inc. are as follows: Beauregard Electric Cooperative, Inc.; Claiborne Electric Co-op, Inc.; Dixie Electric Membership Corporation; Jefferson Davis Electric Co-op, Inc.; Northeast Louisiana Power Cooperative, Inc.; Panola-Harrison Electric Cooperative, Inc.; Pointe Coupee Electric Membership Corporation; South Louisiana Electric Cooperative Association; and Washington-St. Tammany Electric Cooperative, Inc.

[4] CenturyLink website, Company Statistics, updated 3/31/10, attached as Exhibit C.

[5] Innovate Arkansas e-news, "Connect Arkansas Aims to Expand Broadband," Andrew Jensen, 1/1/2009, attached as Exhibit D.

[6] REA Form 263 – General Agreement Joint Use of Wood Poles, Appendix B, April 1954, attached as Exhibit E.

[7] Louisiana Public Service Commission, Docket No. 22022/22093, Section 5 – Unbundled Network Element Studies, attached as Exhibit F.

[8] Louisiana Department of Transportation, Title 70 – Transportation, Part II Utilities, Chapter 5. Standards Manual for Accommodating Facilities on Highway Right-of-Way, Section 505- Definition of Terms (A) Public Utility, attached as Exhibit G.

[9] Louisiana Department of Transportation, Title 70 – Transportation, Part II Utilities, Chapter 5. Standards Manual for Accommodating Facilities on Highway Right-of-Way, Section 503 – Statutes (A) (1) (a), attached as Exhibit H.

Analysis of Cable Costs and Revenues
And the Impact of Pole Rental on Cable System Build-out

Prepared September 30, 2010

Monthly Cable Revenues by Type of Service

	Low	High	Assumed Avg	
Video - Traditional Cable TV	$ 40.00	$ 120.00	$ 80.00	
Internet	$ 20.00	$ 50.00	$ 35.00	
Telephone	$ 30.00	$ 30.00	$ 30.00	
Total Revenue Assumption			$ 145.00	Note 1
Estimated Margin for Service			30%	
Monthly Net Income per Subscriber			$ 43.50	
Annual Net Income per Subscriber			**$ 522.00**	

Cable Construction Costs Per Mile

Includes Engr, DOT permits, Material, Labor and Malkeready Costs	$30,000	Note 2
Total Costs/Mile	**$30,000**	

Annual Costs for A Cable Operator

Cost of Capital/Rate of Return	11.25% (FCC Default)
Maintenance	5%
Depreciation Rate	10%
Taxes (Franchise, Property, Income Taxes)	8%
Administrative and General	5%
Total Annual Charge Rate	**39.25%**

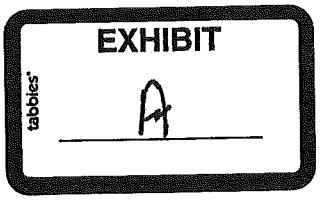
Total Annual Carrying Cost for a mile of cable plant	**$11,775.00**
Annual Pole Rental for one mile of Cable Plant	**$330.00**
22 Poles per Mile	
$15 Annual Rent paid to Electric Cooperative	
Total Annual Cost per Mile including Pole Rents	**$12,105.00**
Pole Rental as a Percentage of Annual Costs to Attacher	**2.7%**

Customers per mile required to Break Even on annual costs **23.2**

Customers per mile required to Break Even on annual costs
IF NO POLE RENTAL IS CHARGED BY POLE OWNER **22.6**

Note 1: Per the NCTA, 2009 Total Revenues amounted to $89,901,000,000 and Basic Cable Video Penetration as of June 2010 was 61,100,000, resulting in an average monthly revenue amount of $122.61 per customer. We feel that using $145 In this analysis is being conservative in our point.

Note 2: Per the Cable Television Association of Georgia, $30,000 is the average cost to construct one mile of fiber optic and coaxial cable plant.



INDUSTRY DATA

Operating Metrics

Availability

Investments in Infrastructure

Value

Other Industry Data

Cable Advertising Revenue

Cable Industry Revenue

Number of Cable Headends

Top 25 Multichannel Video Programming Distributors as of Mar. 2010

Top 25 Cable Programming Networks

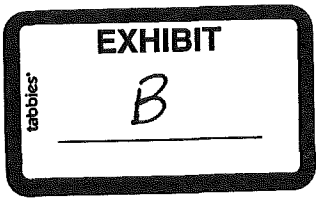
Cable Industry Revenue 1996 - 2009 [a]

(in millions)

Year	Residential Video	All Other Revenue	Total Revenue
1996	$24,136	$2,984	$27,120
1997	$26,270	$3,532	$29,802
1998	$27,626	$6,152	$33,778
1999	$30,050	$7,341	$37,391
2000	$32,541	$9,575	$42,116
2001	$35,734	$9,743	$45,477
2002	$36,738	$11,160	$47,898
2003	$39,338	$15,056	$54,394
2004	$41,813	$18,212	$60,025
2005	$43,832	$21,846	$65,678
2006	$46,518	$25,354	$71,872
2007	$49,105	$29,719	$78,824
2008	$51,467	$33,788	$85,255
2009	$53,040	$36,861	$89,901

Source: SNL Kagan

[a] SNL Kagan



INDUSTRY DATA

Operating Metrics

Availability

Investments in Infrastructure

Value

Other Industry Data

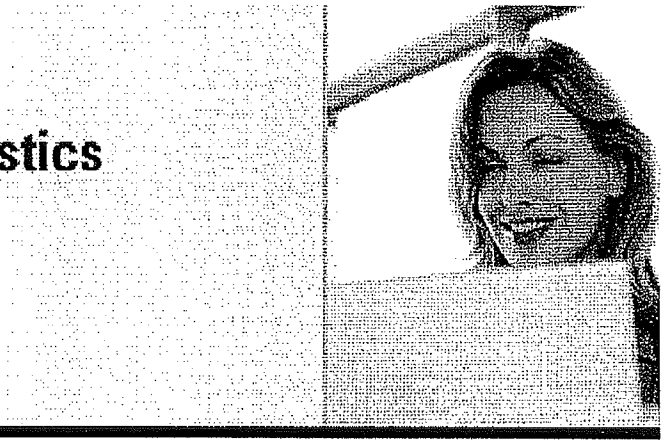
Availability

Availability (as of June 2010)	
Homes Passed by Cable Video Service [1]	127.8 M
Basic Cable Video Penetration of Homes Passed	47.8%
Digital Penetration (% of Basic Video Customers)	72.2%
Homes Passed by Cable High-Speed Internet Service [2]	122.6 M
Cable High Speed Internet Availability to U.S. Households (July 2010) [3]	93%
Homes Passed by Cable HDTV Service	100+ M

[1] SNL Kagan, excludes estimate of overlap coming from cable overbuilders
[2] Total housing units passed figures have been adjusted to avoid double counting of estimated housing units passed by both incumbent cable operators and overbuilders.
[3] NCTA analysis of SNL Kagan and Census Bureau estimates

CenturyLink™

Leadership
Company Statistics
Timeline
Careers
Regulatory
Customer Relations
Doing Business With CenturyLink



Company Statistics

Updated 03/31/10

We are the fourth largest local exchange telephone company in the United States (based on a than 20,000 employees in 33 states serving approximately:

- 7 million access lines
- 2.3 million broadband customers
- 587,000 video subscribers

Access Lines by state

Alabama
access lines: 250,000

Arkansas
access lines: 180,000

California
access lines: 100

Colorado
access lines: 76,000

Florida
access lines: 1,324,000

Georgia
access lines: 30,000

Idaho
access lines: 4,800

Illinois
access lines: 48,000

Louisiana
access lines: 75,000

Michigan
access lines: 80,000

Minnesota
access lines: 141,000

Mississippi
access lines: 20,000

Missouri
access lines: 541,000

Montana
access lines: 49,000

Nebraska
access lines: 17,000

Nevada
access lines: 507,000

Ohio
access lines: 378,000

Oklahoma
access lines: 2,200

Oregon
access lines: 107,000

Pennsylvania
access lines: 267,000

South Carolina
access lines: 75,000

Personal Business Wholesale

Tennessee
access lines: 172,000

Texas
access lines: 300,000

Virginia
access lines: 330,000

EXHIBIT
tabbies
C

Indiana
access lines: 183,000

Iowa
access lines: 1,500

Kansas
access lines: 83,000

New Jersey
access lines: 141,000

New Mexico
access lines: 4,600

North Carolina
access lines: 980,000

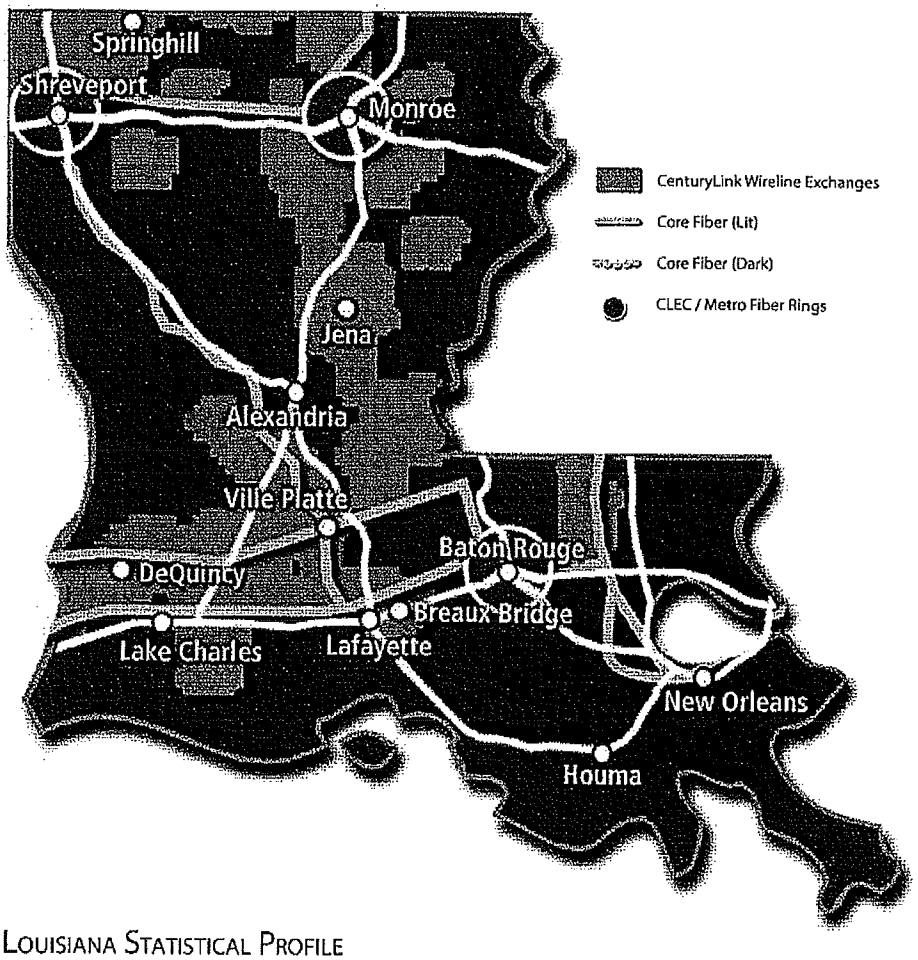
Washington
access lines: 197,000

Wisconsin
access lines: 339,000

Wyoming
access lines: 11,000

CenturyLink is a leading provider of high-quality broadband, entertainment and voice services over its advanced communications networks to consumers and businesses in 33 states. CenturyLink, headquartered in Monroe, La., is an S&P 500 company and is included among the Fortune 500 list of America's largest corporations. For more information on CenturyLink, visit www.centurylink.com.

CenturyLink in Louisiana



Louisiana Statistical Profile

Employees	1,900
2009 Annual Payroll*	$127,778,000
Total Investment	$886,424,000
Access Lines	75,000
Access Lines, DSL-Enabled	93%

*As of 12/31/09
All other statistics as of 03/31/10

General Manager John Dreher
Arkansas, Louisiana, Mississippi
and Oklahoma Market
2616 West Main Street
Jacksonville, Arkansas 72076

Corporate Headquarters
CenturyLink, Inc.
100 CenturyLink Drive
Monroe, Louisiana 71203

www.centurylink.com
318.388.9000

CenturyLink™

Connect Arkansas Aims To Expand Broadband

By Andrew Jensen
1/1/2009 12:00:00 AM

Broadband Internet in Arkansas is set to get a boost in 2009.

The Arkansas Legislature passed Act 604 at its 2007 session, forming Connect Arkansas as a nonprofit organization to promote education about and deployment of broadband service.

Arkansas currently ranks No. 47 among states in broadband deployment and No. 49 in number of adults online. By pushing initiatives to improve broadband access and through education about the benefits of high-speed Internet, Connect Arkansas plans to improve the state's rankings.

Connect Arkansas, a division of Arkansas Capital Corp. in Little Rock, cites the CSE Freedom Foundation's estimate that bringing broadband Internet to the entire state could create 8,200 new jobs and add $2.6 billion annually to the Gross State Product.

Arkansas Capital Corp. is a nonprofit business development company founded in 1957 that provides bridge financing to small businesses in the state. Connect Arkansas' annual funding need is just shy of $3 million, which will be pursued through the legislature appropriations and other venues.

Since 2007, Connect Arkansas has been busy creating an "E-Communities" plan to help educate cities and counties on how to develop digital infrastructure. It has surveyed citizens on their awareness and use of broadband Internet and will present its first map of Arkansas' broadband infrastructure during the first quarter of 2009 with regular progress updates to follow.

A survey of 608 Arkansans by Connect Arkansas revealed that not only is regular broadband use tied largely to income and location, but that a large-scale education push is needed.

The survey results showed that 51 percent of Arkansans don't have broadband service, and 29 percent have never even used the Internet at all.

The latter figure is roughly equal to the 30 percent of respondents who said they would not subscribe to broadband service even if it were available to them and the price was affordable.

Arkansans with incomes greater than $50,000 were the heaviest users of broadband, with 54 percent using the Internet multiple times per week.

By contrast, just 20 percent of those with incomes less than $30,000 reported using the Internet more than once per week. The elderly are also infrequent users. Connect Arkansas' survey showed that of those 29 percent who'd never used the Internet, 47 percent were people over 60. Only 27 percent of Arkansans' over 60 have broadband subscriptions.

Beyond obvious obstacles like money, Connect Arkansas believes the biggest to overcome is attitude.

Arkansas Capital Corp. CEO C. Sam Walls said Connect Arkansas' most important mission is, "educating our population and our leadership that [broadband service] is a necessary component of our lives."

print article
email a friend

categories

Advanced Materials and Manufacturing Systems
Agriculture, Food and Environmental Sciences
Bio-based Products and Services
Biotechnology, Bioengineering and Life Sciences
Funding Sources
Information Technology
Innovate Arkansas Clients
Intellectual Property
Tips and Advice
Transportation / Logistics
University Research
Venture Capital Firms

Only by increasing demand will Arkansas draw the millions of dollars in investments from service providers to expand deployment, Walls said.

"Service providers have demonstrated throughout the nation that they are willing to spend hundreds of millions of dollars on their infrastructure when demand is present," he said.

U.S. Lagging, Too

Just as Arkansas lags its peers, the United States falling further behind other nations.

The U.S. ranks 15th of 30 industrialized nations for broadband deployment, or the percent of the population subscribing to broadband. It also trails badly in average download speeds.

According to Speedmatters.org, a project sponsored by the Communications Workers of America, the median Internet download speed in the U.S. during 2008 was 2.3 megabits per second.

Japan's median speed was 63 mbps, 30 times faster than the U.S. To put that in more comprehensible terms, people in Japan can download an entire movie in two minutes. It can take two hours or more in the U.S.

Of course, the United States has a much larger geography to cover and a less dense population, the same issues facing Arkansas. In South Korea or Japan, where most live in high-rise apartment buildings, wiring high-speed Internet capacity is much easier and costs less.

Speedmatters notes that a U.S. cable modem customer receiving speeds of 3 mbps to 5 mbps can expect to pay $40 to $50 per month. In Japan, a connection of 26 mbps costs around $22, five to eight times faster at half the price.

Around 57 percent of urban and 60 percent of suburban households have broadband service in the U.S., only 38 percent of rural households do.

According to the 2000 census, about 48 percent of Arkansas' population lives in rural areas, and the state ranks No. 41 in farmers who are online and using computers.

Walls said it's premature to put a price tag on increasing broadband deployment in Arkansas. First, the state must understand its infrastructure, which is the purpose of Connect Arkansas' ongoing mapping process, understand its goals and then seek funding through a variety of public or private sources.

The Arkansas legislature has also created the Arkansas Broadband Advisory Council, the Cyber Infrastructure Task Force and the Applied Science and Technology Authority to help develop a comprehensive plan.

"High-speed telecommunications is as critical to connect our regional economies as four-lane highways," Gov. Mike Beebe said after signing Act 604. "Businesses increasingly rely on the Internet super-highway and need that access to compete worldwide."

Solutions Ahead

The U.S. is the only one of 30 industrialized nations to not have a comprehensive, national broadband deployment strategy, but that should change soon with a new incoming administration led by tech-savvy and BlackBerry-addicted Barack Obama as President.

Obama has pledged to make Internet infrastructure improvements part of his economic stimulus plan, but no firm figures have been released yet. Improving rural access has been a focal point of Obama's digital strategy.

Walls expects Arkansas to be well-positioned if dollars become available thanks to the leg work it's already done.

While Arkansas ranks low in many broadband deployment categories — cracking the top half only in public schools access at No. 23 — it does rank highly in at least a couple "new economy" areas.

According to the 2007 New Economy State Index, the state ranks No. 5 in "gazelle" jobs, No. 7 in entrepreneurial activity and No. 22 in economic dynamism.

("Gazelle" jobs are defined as those at companies with annual sales revenue that has grown 20 percent or more for four straight years as a share of total employment.)

Walls noted that the University of Arkansas system has been developing the Arkansas Education and Research Optical Network (AREON). AERON allows faculty and researchers at the UA to connect to the Internet at speeds 20 times faster on campus and 100 times faster on the off-campus network.

The AERON system is designed to eventually hook into the National LambdaRail. The NLR is a high-speed optical transmission network owned and controlled by the nation's research community.

The LambdaRail consists of some 15,000 miles of fiber-optic cable, stretching from Massachusetts to Seattle, down to San Diego, across the southern border to Florida and back up the Atlantic coast.

The nearest "node" of the NLR to Arkansas is in Tulsa, marking one of three north-south connections between the two east-west corridors.

Using two of Cisco's optical electronic systems, the network has a maximum of 40 and 32 wavelengths per fiber pair, respectively.

Each wavelength can support transmission of 10 billion bits per second, but only four wavelengths have been implemented and will be added as needed.

Arkansas has a good model to follow in Kentucky. A group of private and public entities formed Connect Kentucky to create the kind of state broadband map Arkansas has nearly completed.

The map led to community plans to stimulate local demand, boosting broadband deployment in Kentucky from 60 percent to 95 percent.

Computer ownership increased 54 percent, and 54,000 technology -related jobs were created over a three-year period according Connect Kentucky Quarterly.

"The goal of Connect Arkansas is to facilitate that every Arkansans has access to broadband speed Internet within five years and an understanding of how it will impact their lives," said Walls. "Within 10 years we would like Arkansas to be held up globally as a model of how you get your population on-line and integrate the Internet into their daily lives."

APPEXDIX B

This Appendix describes the basic principles and guides which have been used under this Agreement in setting the rents specified in Article XI and which are to be used in making periodical adjustments of rentals as provided for in Article XII.

Under these principles the rentals are intended, in so far as it is practicable, to result in a sharing of the economies realized by the joint use of pole plant in proportion to the relative costs of separate pole line construction.

The procedures outlined herein take into account the following objectives:

1. An equitable division of savings regardless of the number of jointly used poles owned by each party.

2. Rental rates applicable universally in the area covered by the Agreement regardless of whether the pole lines involved are initially constructed with joint use in view or are existing lines modified for joint use.

3. Appropriate allowance in the rental rates for additional costs incurred by each party in supplying 'normal joint poles', as defined in the Agreement, and the costs of other items required in the joint use of poles which would not be incurred in separate line construction.

4. Rentals based on the costs of "typical miles" of separate lines, of newly constructed joint lines and of existing lines modified to make them suitable for joint use. The 'per mile' values of rentals are then reduced to 'per pole' values for purposes of simplifying tabulations and to provide for the joint use of scattered poles.

The rentals are the dollar values resulting from the licensee paying to the owner, as annual rental, an amount representing the annual charge on a separate line for the licensee less the sum of (a) the annual charges on the additional costs incurred by the licensee in establishing joint use and (b) the licensee's share of the total annual savings. This share is the ratio of the Licensee's typical separate line costs to the sum of the typical separate line costs of each of the parties.

The annual rent payable can also be stated as follows:

Licensee's annual rent	*(Equals)*	*Annual charges saved by licensee through not having to build a separate line*	*(Less)*	*Licensee's appropriate percentage*	*(Of) Total savings in anual charges realized through joint use*

The cost in place of a line of poles is made up of a number of factors including such items as right-of-way solicitation, clearing, staking, direct labor and material costs of bare poles in place and pro rata shares of construction supervision and overhead. These costs, for a specific area, may differ considerably from corresponding costs in other parts of the country. These variations in pole line costs will, however, affect both power and telephone lines to about the same degree.

The parties to this contract will mutually agree on the average cost of a typical mile of 35 foot, class 6 poles in place in their common area. Below are tabulated appropriate rentals over a range of typical mile costs. From this tabulation the parties shall use the rental payments associated with the value nearest to the agreed upon average cost.

LOUISIANA DOCKET NO. 22021/22093
SECTION 5
UNBUNDLED NETWORK ELEMENT (UNE) STUDIES

J.0 OTHER
J.2 ACCESS TO POLES, DUCTS, CONDUITS AND RIGHTS OF WAY
J.2.1 ACCESS TO POLES PER POLE, PER FOOT, PER YEAR
J.2.2 ACCESS TO CONDUITS, PER FOOT
J.2.3 ACCESS TO INNERDUCT, PER FOOT

Element Description

Access to poles provides a means for CLECs to attach aerial cable facilities to poles owned by BellSouth. Access to conduits and innerduct provides a means for CLECs to utilize BellSouth's underground structures to house the CLEC's underground facilities.

Study Technique

A Microsoft Excel spreadsheet is used to develop the investments associated with pole attachments and conduit and innerduct structures.

Pole Attachments
The standard size joint use pole and allocation of space is based on an analysis of Joint Use contracts within the state performed by BellSouth's Network Planning and Provisioning department. This analysis concluded that the standard size joint use pole is a 40 foot class 5 pole. The analysis also concluded that the allocation of space is as follows:

Top of Pole	6 inches
Power Company	7 feet 6 inches
National Electric Safety Code	3 feet 4 inches
Local Exchange Carrier	2 feet 6 inches
Other Communication Space	1 foot
Minimum Attachment Height	19 feet 2 inches
Depth	6 feet

The study assumes the amount of usable space and other than usable space as follows:

Average usable space	11 feet
- Power Company	7.5 feet
- Cable	1 foot
- LEC	2.5 feet
Average nonusable space -	29 feet
- 6 inches at top of pole	

- 40 inches clearance between electric and communications space
- 19.2 feet of minimum ground clearance
- 6 feet below ground

Material and Contract Labor prices were provided by BellSouth's Network Planning and Provisioning department. Material prices are based on current Catalog prices and exclude extraneous hardware such as nuts, bolts, anchors and guy wires. The contract labor is based on the average of contracts within the state for transporting and placing a 40 foot class 5 pole.

Conduit and Innerduct Structures
All investments are based upon an analysis of Contractual Agreements and current Material Catalog Prices performed by BellSouth's Network Planning and Provisioning department. The Material and Labor represents a per foot investment for one inner duct, a standard 4" duct, and a typical multiple conduit structure (nine 4" ducts).

Specific Study Assumptions

- The studies are based on the sharing of usable and nonusable space. The resulting investment is on a per foot, per entity basis.
- The conduit and innerduct study assumes the placement of one additional 4" duct for maintenance purposes.

Recurring Cost Summary

Louisiana
J.2.1 - Access to Poles Per Pole, Per Foot, Per Year

7/7/97

	Volume Sensitive				Volume Insensitive			
	Direct Cost	Shared Cost		TELRIC	Direct Cost	Shared Cost		TELRIC
Recurring Cost Devel. Sheets Cols L, N, & O	$17.30	$1.67		$18.97				$0.00
Total Cost	$17.30	$1.67		$18.97	$0.00	$0.00		$0.00
Gross Receipts Tax Factor			X	1.0050			X	1.0050
Cost (including Gross Receipts Tax)				$19.06				$0.00
Common Cost Factor			X	1.0539			X	1.0539
Economic Cost				$20.09				$0.00

Total Economic Cost : $20.09

Investment Development (Excluding Land, Building, Pole, and Conduit)
Volume Sensitive

Louisiana
J.2.1 - Access to Poles Per Pole, Per Foot, Per Year

7/7/97

	FRC	Sub FRC	A Material	B Inflation Factor	C=AxB Adjusted Material	D1 Plug-in Inventory Factor	D2 Mat'l Factor	D3 Telco Factor	D4 Plug-in Factor	D5 Hardwire Factor	E=Cx(D1xD2 x...xD5) In-Plant Investment	F Supporting Equipment &/or Power Loading	G=ExF Total Investment
						In-Plant Factors (Default = 1)							
Poles - without rent in Plant Specific ACF	1CP		$95.62	1.0822	$103.48	1.0000	1.0000	1.0000	1.0000	1.0000	$103.48	1.0000	$103.48

001010

Recurring Cost Development
Volume Sensitive

Louisiana
J.2.1 - Access to Poles Per Pole, Per Foot, Per Year

7/7/97		A=Prev Page Col G	B	C=(AxB)	D	E=(AxD)	F	G=(AxF)	H	I=(AxH)	J	K=(AxJ)	L=(C+E+G+I+K)	M	N=(AxM)	O=(L+N)
	FRC	Investment	Depreciation Factor	Depreciation	Cost of Money Factor	Cost of Money	Income Tax Factor	Income Tax	Plant Specific Factor	Plant Specific Expense	Ad Valorem Factor	Ad Valorem Expense	Direct Cost	Shared Cost Factor	Shared Cost	TELRIC
Poles - without rent in Plant Specific ACF	1CP	$103.48	0.0474	$4.90	0.0682	$7.06	0.0308	$3.19	0.0047	$0.49	0.0161	$1.67	$17.30	0.0161	$1.67	$18.97
Total		$103.48											$17.30		$1.67	$18.97

001011

Grout—a cement mortar or a slurry of fine sand or clay, as conditions govern.

Headquarters Utility and Permit Engineer—the licensed professional engineer authorized by the chief engineer to perform all of the functions associated with relocating utility facilities and issuing right-of-way permits.

High Grade Highway—a highway having a minimum of four lanes divided by a median, or a highway having two or more lanes and an average daily traffic volume of 3,500 vehicles or more.

Highway Prism or *Roadway Prism*—that portion of earth supporting the roadway structure and allied drainage ditches and/or structures.

Highway Purpose—any purpose approved by the legislature of Louisiana to be accomplished by the office of highways of the Department of Transportation and Development upon highways and streets, including relocation of public utility and railroad facilities, and including the purpose of compliance with federal laws, rules, and regulations.

Highway, Street or *Road*—a general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way. Recommended usage in urban areas: highway or street; in rural areas: highway or road.

Inspector—the engineer's authorized representative assigned to make detailed inspections of contract performance.

Interchange—a grade-separated intersection with one or more turning roadways for travel between intersecting legs.

Intermediate Grade Highway—a paved highway having a minimum of two lanes and an average daily traffic volume which is less than 3,500 vehicles.

Laboratory—the testing laboratory of the DOTD or any other approved testing laboratory which may be designated by the engineer.

Local Street or *Local Road*—a street or road primarily for access to residence, business of other abutting property not in state maintained highway system.

Low Grade Road—any road having an unpaved surface.

Major Highway or *Major Road*—an arterial highway with intersections at grade and direct access to abutting property, and on which geometric design and traffic control measures are used to expedite the safe movement of through traffic.

Manhole—an opening in an underground system which workmen or others may enter for the purpose of making installation, inspections, repairs, connections and tests.

Median—the portion of a divided highway separating the *traveled ways* for traffic in opposite directions.

Normal—crossing at a right angle.

Oblique—crossing at an acute angle.

Overfill—backfill above a pipe.

Parish—the parish in which the specified work is to be done.

Parkway—an arterial highway for noncommercial traffic, with full or partial control of access, and usually located within a park or a ribbon, or park-like developments.

Partial Control of Access—the authority to control access is exercised to give preference to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at grade and some private driveway connections.

Pavement Structure—the combination of subbase, base course and surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.

Pipe—a tubular product made as a production item for sale as such. Cylinders formed from plate in the course of the fabrication of auxiliary equipment are not pipe as defined here.

Plans—the contract drawings which show the locations, character, and dimensions of the prescribed work, including layouts, profiles, cross sections and other details.

Pressure—relative internal pressure in psig (pounds per square inch gauge).

Profile Grade—the trace of a vertical plane intersecting the top surface of the proposed wearing surface or other designated course usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context.

Project—the specific section of the highway together with all appurtenances and construction to be performed thereon under the contract.

Project Engineer—the engineer assigned to one or more specified construction projects to represent the DOTD through the chief engineer.

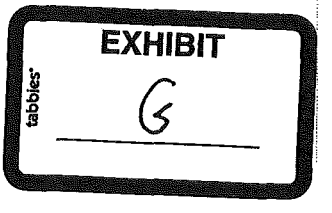
Project Number—a number used for convenience to describe and delineate certain construction within definite geographical limits.

Project Specifications—all standard specifications, supplemental specifications, special provisions and other provisions that are applicable to the project.

Public Utility—any business or organization that regularly supplies the public with a commodity or service including electricity, gas, water, telephone, telegraph, radio, television, cable television, drainage, sewerage, and other like services.

Right-of-Way—a general term denoting land, property or interest therein, usually in a strip, acquired for or devoted to transportation purposes.

Rigid Pipe—a welded or bolted metallic pipe or reinforced, prestresses or pretensioned concrete pressure pipe designed for diametric deflection of less than 1.0 percent.



§503. Statutes

A. Responsibilities Pertaining to Highway Occupancy

1. State of Louisiana Department of Transportation's Responsibility

a. Prescribe and enforce all rules and regulations as to construction, repairs or maintenance of the poles, wires and lines of telegraph, telephone, community antenna television systems or power companies and pipelines of gas districts, gas, water, sewers, or other pipeline companies, so as to insure the safety of the traveling public in using the roads, bridges and highways in this state; and to include regulations in contracts and agreements entered into with utilities in granting permits for construction on right-of-way necessary to insure the safety of the traveling public and prevent damage to highways and bridges.

b. Prescribe and enforce any reasonable rules and regulations so as to prevent unnecessary trespassing upon or damage to any of the public roads, bridges or highways of the state.

c. Direct utilities to relocate their plant when such plant is in conflict with highway construction contracts.

d. Pay cost of adjustment of plant to be relocated if said plant is located on private right-of-way.

e. Pay cost of adjustment if plant in conflict is located on public right-of-way under certain conditions, such as utilities having prior rights.

f. Withhold permit from utility if it concerns area where highway construction project is in progress until utility has received permission from the prime highway contractor to enter or cross said project.

2. Utilities Responsibility

a. Relocate utility's facilities that are in conflict with highway or street constructions when directed to do so by the State of Louisiana Department of Transportation and Development.

b. Ensure that installations within highway right-of-way are in accordance with applicable federal, state, and industry standards and policies.

c. Coordinate location of facility installation with other utilities in the same area.

d. Carry out the provisions of contract or agreement entered into with the State of Louisiana Department of Transportation and Development when permit for construction in highway right-of-way was issued.

e. If proposed construction by utility is in conflict with highway construction already in progress, secure written permission from the prime highway contractor to cross the project prior to requesting a permit from the department. Hold the State of Louisiana Department of Transportation and Development harmless from any claims by highway contractor for damages done by utility during construction.

f. Pay cost of adjustment from public highway right-of-way, except where utility has prior rights.

AUTHORITY NOTE: Promulgated in accordance with R.S. 19:14, 30:210-217, 32:236, 38:2223, 38:3094, 48:191-193, 48:217, 48:295.1-4, 48:343-344, 48:381-383, 48:385-387, 51:1901-1909.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Utility and Permit Section, LR 20:317 (March 1994).

§505. Definition of Terms

A. The following are definitions of the terminology used in these standards:

Abandonment—occurs when a facility remains in highway right-of-way after it is no longer functioning.

Access Connection—any roadway facility by means of which vehicles can enter or leave a highway. Included are intersections at grade, private driveways, and ramps or separate lanes connecting with cross streets or frontage roads.

Advertisement—a public announcement inviting bids for work to be performed or materials to be furnished.

Approved Drawing—relocation drawings submitted by a utility in place of a utility relocation agreement. This is allowed when the state has no liability for the adjustments. Approved drawings have the same force as an agreement, are assigned an agreement number, and may be referred to as a utility agreement.

Arterial Highway—a general term denoting a highway primarily for through traffic, usually on a continuous route.

Auxiliary Lane—the portion of the roadway adjoining the traveled way for parking, speed-change or for other purposes supplementary to through traffic movement.

Average Daily Traffic—the average 24-hour volume, being the total volume during a stated period divided by a number of days in that period. Unless otherwise stated, the period is a year. The term is commonly abbreviated as ADT.

Backfill—replacement of soil around and over a pipe.

Backslope—in a cut section, the graded slope from the back of the ditch to the natural grade.

Base Course—the layer or layers of specified material of designed thickness on a subbase or a subgrade to support a surface course.

Bedding—organization of soil to support a pipe.

Bidder—an individual, partnership, corporation, joint venture or any acceptable combination thereof submitting a bid proposal.

Bridge—structure, including supports, erected over a depression or an obstruction, as water, highway, or railway, which has a passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches or extreme ends of openings for multiple boxes; may include multiple pipes